



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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1846229 - R8 SDMS

DEC 06 2016

Ref: 8ENF-L

Mr. Kevin R. Murray
Holland & Hart LLP
222 South Main Street, Suite 2200
Salt Lake City, Utah 84101

RE: Future Response Costs Dispute Resolution Decision, Richardson Flat Tailings Site

Dear Mr. Murray:

In accordance with Section XX [Dispute Resolution] of the Administrative Order on Consent for EE/CA Investigation and Removal Action, with an effective date of March 6, 2014, CERCLA Docket No. 08-2014-0003 (AOC), issued by the U.S. Environmental Protection Agency (EPA) to United Park City Mines Company (United Park), this letter sets forth my decision with respect to United Park's dispute regarding payment of past response costs in the amount of \$205,820. These costs relate to Tetra Tech's work regarding Innovative Assessment activities and utilities, as well as a variety of other tasks undertaken at the request of the EPA project manager. The capitalized terms used in this letter that are defined in the AOC shall have the same meaning as assigned to them in the AOC.

I. The Dispute Resolution Process

On September 16, 2016, United Park invoked dispute resolution with regard to Future Response Costs incurred in 2014, and billed in 2015. Paragraph 86 of the AOC provides that dispute resolution should be invoked within thirty days of the decision subject to objection. While United Park's request was not timely, the EPA agreed to proceed with the dispute resolution process.

II. Decision

In considering the dispute between United Park and the EPA Region 8, I have reviewed and considered all the materials listed in the Enclosure to this letter.

After carefully considering all of the information available, I have concluded that the entire outstanding amount is properly due to the EPA. I base this decision on the following:

1. The EPA/Tetra Tech Statement of Work (SOW) explains Tetra Tech's role in providing information and analysis as the AOC is implemented. Pursuant to both the SOW and the AOC, the Innovative Assessment activities described in the bill fall within the definition of Future Response Costs because they were costs incurred in reviewing and developing plans pursuant to the AOC. One of the stated purposes of the AOC is to "determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from OU2 and OU3 by conducting an engineering evaluation..." (Paragraph 8). The remedial project

manager sought review of the Innovative Assessment reports in the context of the OU2/3 EE/CA to better understand contamination higher in the watershed and the potential impact of such sources eroding down the watershed and contributing to contamination in OU2/3. Thus, the Innovative Assessment costs qualify as Future Response Costs.

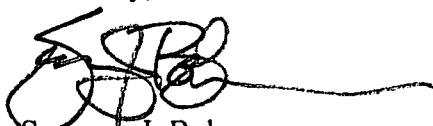
2. The SOW tasked Tetra Tech to develop guidance to provide to utility companies for soils handling and characterization during digging and trenching within OU2/3. These activities relate to another stated purpose of the AOC, to "conduct all actions necessary to implement the Removal Action to be selected..." (Paragraph 8). The utilities-related items were prepared to ensure that, as utilities work was ongoing, contamination would not be exacerbated, thereby increasing the cost or complexity of implementing the Removal Action. Thus, the utility-related items qualify as Future Response Costs and are properly included in the bill.
3. Pursuant to Paragraph 76 of the AOC, United Park is required to pay "all Future Response Costs incurred by EPA not inconsistent with the NCP for OU2 and OU3." As discussed above, the Tetra Tech costs fall within the definition of Future Response Costs.

The EPA documented the costs incurred and provided that documentation to United Park. Under the Tetra Tech contract, Tetra Tech is obligated to provide technical support to the EPA remedial program for several specific tasks. The tasks are broken out by activity, as well as operable unit. Tetra Tech provides the support necessary for each or any task, and issues invoices to the EPA for the support provided. The EPA pays the invoices and then includes the amount paid for tasks associated with OU2/3, plus the EPA indirect rate, in each oversight bill issued to United Park.

4. With respect to the concern that the EPA billed United Park for costs incurred prior to the finalization of the AOC, as articulated in United Park's September 16, 2016, letter invoking formal dispute resolution, this billing was in error, and the EPA removed those costs from the bill by letter dated August 16, 2016. United Park also raised the objection that the EPA did not consult with United Park on work conducted by Tetra Tech. While the EPA endeavors to keep the lines of communication open as we work with parties to implement response actions, there is no requirement for the EPA to consult with United Park on work conducted by EPA contractors.

Therefore, based on a full reading of the AOC, as well as the other documents listed in the Enclosure, I find no basis to sustain United Park's dispute. Pursuant to Paragraph 78(b), please pay to the EPA \$207,600.16 (205,820.70 + 1,779.46 in interest) within 5 days of your receipt of this letter.

Sincerely,



Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

Enclosure

cc: Andrea Madigan, Supervisory Attorney, CERCLA
Amelia Piggott, Enforcement Attorney

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